

## **IC 27-7-9**

### **Chapter 9. Mine Subsidence Insurance**

#### **IC 27-7-9-1**

##### **"Commissioner" defined**

Sec. 1. As used in this chapter, "commissioner" refers to the insurance commissioner.

*As added by P.L.164-1986, SEC.1.*

#### **IC 27-7-9-2**

##### **"Insurer" defined**

Sec. 2. As used in this chapter, "insurer" has the meaning set forth in IC 27-1-2-3(x).

*As added by P.L.164-1986, SEC.1.*

#### **IC 27-7-9-3**

##### **"Mine subsidence" defined**

Sec. 3. As used in this chapter, "mine subsidence" means the collapse of inactive underground coal mines abandoned before August 3, 1977, resulting in damage to a structure. The term does not include loss caused by earthquake, landslide, volcanic eruption, or collapse of storm or sewer drains.

*As added by P.L.164-1986, SEC.1. Amended by P.L.124-1992, SEC.1.*

#### **IC 27-7-9-3.5**

##### **"Peril" defined**

Sec. 3.5. As used in this chapter, "peril" means the cause of a loss, such as a fire, an explosion, or a flood.

*As added by P.L.124-1992, SEC.2.*

#### **IC 27-7-9-4**

##### **"Premium" defined**

Sec. 4. As used in this chapter, "premium" has the meaning set forth in IC 27-1-2-3(w).

*As added by P.L.164-1986, SEC.1.*

#### **IC 27-7-9-5**

##### **"Structure" defined**

Sec. 5. As used in this chapter, "structure" means any dwelling, building, or fixture permanently fixed to real property. The term does not include land, trees, crops, or other plants, nor does the term include a dwelling, building, or fixture that is owned by a public or governmental entity.

*As added by P.L.164-1986, SEC.1. Amended by P.L.124-1992, SEC.3.*

#### **IC 27-7-9-6**

##### **List of counties in which mine subsidence insurance available**

Sec. 6. The department of natural resources shall identify and

maintain a list of counties that are:

- (1) at least partially within the Illinois Coal Basin; or
- (2) underlain by coal-bearing rock formations of the Pennsylvanian system.

The mine subsidence insurance provided under this chapter is available only to cover structures located in counties identified by the department of natural resources under this section.

*As added by P.L.164-1986, SEC.1.*

#### **IC 27-7-9-7**

##### **Mine subsidence insurance fund; deposits; investment**

Sec. 7. (a) The mine subsidence insurance fund is established for the purpose of making mine subsidence insurance available to owners of property located in counties identified under section 6 of this chapter. The fund shall be administered by the commissioner. Money shall be deposited in the fund from:

- (1) premiums for mine subsidence insurance remitted by insurers to the commissioner; and
- (2) funds obtained through federal grants or any other source.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) Money in the fund at the end of a particular fiscal year does not revert to the state general fund.

*As added by P.L.164-1986, SEC.1.*

#### **IC 27-7-9-8**

##### **Extent of coverage necessary; deductible**

Sec. 8. (a) Coverage for damage due to mine subsidence must be available as an additional form of coverage under any insurance policy providing the type of insurance described in Class 3(a) of IC 27-1-5-1 to directly cover one (1) or more structures located in a county identified under section 6 of this chapter. The mine subsidence coverage must be available in an amount adequate to indemnify the insured to the extent of the loss in actual cash value of the covered structure due to mine subsidence, less a deductible equal to two percent (2%) of the insured value of the structure under the policy. However, the deductible must be no less than two hundred fifty dollars (\$250) and no more than five hundred dollars (\$500).

(b) An insurer proposing to issue a policy providing the type of insurance described in Class 3(a) of IC 27-1-5-1 to cover one (1) or more structures located in a county identified under section 6 of this chapter shall inform the prospective policyholder of the availability of mine subsidence coverage under this section. An insurer shall inform the prospective policyholder of the availability of mine subsidence coverage under this subsection when a policy described in this subsection is issued.

(c) When an insurer informs a prospective policyholder of the amount of the premium for the mine subsidence coverage that is available as an additional form of coverage under a policy as required by subsection (a), the premium for the mine subsidence coverage must be stated separately from the premium for the other coverage provided by the policy. The amount of the premium for mine subsidence coverage provided by an insurer under this section must be set according to the premium level set by the commissioner under section 10 of this chapter.

(d) Except as provided in subsection (f), an insurance policy providing the type of insurance described in Class 3(a) of IC 27-1-5-1 to directly cover one (1) or more structures located in a county identified under section 6 of this chapter must include the mine subsidence coverage provided for under subsection (a) if the prospective insured (before issuance of the policy) or the insured (before renewal of the policy) indicates that the coverage is to be included in the policy.

(e) An insurer is not required to provide mine subsidence coverage under subsection (a) under any insurance policy in an amount exceeding the amount that is reimbursable from the fund under section 9(a)(4) of this chapter.

(f) An insurer must decline to make the mine subsidence coverage provided for under subsection (a) available to cover a structure evidencing unrepaired mine subsidence damage, until necessary repairs are made. An insurer may also decline to make the mine subsidence coverage available under an insurance policy if the insurer has:

- (1) declined to issue the policy;
- (2) declined to renew the policy; or
- (3) canceled all coverage under the policy for underwriting reasons unrelated to mine subsidence.

*As added by P.L.164-1986, SEC.1. Amended by P.L.29-1987, SEC.2; P.L.150-1990, SEC.1; P.L.124-1992, SEC.4; P.L.1-1993, SEC.206; P.L.116-1994, SEC.57; P.L.91-1998, SEC.9; P.L.132-2001, SEC.3; P.L.182-2001, SEC.3.*

#### **IC 27-7-9-8.4**

##### **Additional forms of coverage; application to structures**

Sec. 8.4. If coverage for damage due to mine subsidence is added under this chapter as an additional form of coverage to a policy providing the coverage described in Class 3(a) of IC 27-1-5-1, the mine subsidence coverage of the policy must apply to structures in the same manner as coverage for other perils under the policy.

*As added by P.L.124-1992, SEC.5.*

#### **IC 27-7-9-8.5**

##### **Limitation on amount payable; one mine subsidence occurrence; damage occurring before issuance of policy; duty to investigate; liability**

Sec. 8.5. (a) The amount payable through mine subsidence

insurance provided under this chapter for all damage caused by one (1) mine subsidence occurrence is limited to the amount of insurance that:

(1) is in force with respect to the structure or structures damaged in the occurrence; and

(2) is reinsured under section 9 of this chapter;

at the time when the damage to the structure or structures occurs.

(b) For the purposes of this section, all damage that is caused by:

(1) a single mine subsidence event; or

(2) two (2) or more mine subsidence events that are continuous;

shall be considered as having been caused by one (1) mine subsidence occurrence.

(c) Neither an insurer, an agent of an insurer, nor an employee of an insurer is obligated to investigate for mine subsidence damage that may have occurred before the issuance or renewal of a policy including mine subsidence coverage under this chapter, unless specifically informed of such damage by the insured or prospective insured.

(d) Neither an insurer, an agent of an insurer, nor an employee of an insurer is liable for mine subsidence damage that occurs before the issuance of a policy including mine subsidence coverage under this chapter.

*As added by P.L.150-1990, SEC.2. Amended by P.L.124-1992, SEC.6.*

## **IC 27-7-9-9**

### **Reinsurance; terms; ceding commission**

Sec. 9. (a) An insurer making the type of insurance described in Class 3(a) of IC 27-1-5-1 shall enter into a reinsurance agreement with the commissioner. The reinsurance agreement must include the following terms:

(1) The insurer agrees to cede to the commissioner one hundred percent (100%) of any mine subsidence coverage issued under this chapter, subject to a maximum limit of two hundred thousand dollars (\$200,000) per structure insured.

(2) The insurer shall collect the premiums for mine subsidence insurance, may retain a ceding commission in an amount set by the commissioner, and shall remit the remainder of the premiums to the commissioner for deposit in the mine subsidence insurance fund.

(3) The insurer, in consideration of the ceding commission, shall:

(A) undertake the adjustment of losses under the mine subsidence coverage issued under this chapter by the insurer, with technical assistance provided under section 9.5 of this chapter; and

(B) pay the taxes and absorb all other expenses necessarily incurred by the insurer in the sale of policies and the administration of the mine subsidence insurance program under this chapter.

(4) The commissioner shall reimburse the insurer from the mine subsidence insurance fund for all amounts paid to policyholders for mine subsidence insurance claims.

(5) The insurer is not required to pay a claim for any mine subsidence loss insured under this chapter if the amount available in the mine subsidence insurance fund is insufficient to reimburse the insurer for the claim.

(b) The determination of the commissioner as to the amount of the ceding commission that an insurer may retain under subsection (a)(2) must be based on a consideration of the insurer's reasonable administrative costs (including insurance producers' commissions). *As added by P.L.164-1986, SEC.1. Amended by P.L.150-1990, SEC.3; P.L.124-1992, SEC.7; P.L.189-1996, SEC.1; P.L.182-2001, SEC.4; P.L.178-2003, SEC.48.*

#### **IC 27-7-9-9.5**

##### **Assistance with adjusting of claims; responsibility of insurer; costs paid from fund**

Sec. 9.5. (a) The commissioner shall provide insurers with assistance from one (1) or more individuals with technical expertise in mine subsidence for the purpose of assisting with the adjusting of claims under coverage issued under this chapter. To comply with this section, the commissioner may:

- (1) expand the staff of the department of insurance; or
- (2) enter into contracts providing for the services of persons with the necessary technical expertise to provide assistance to insurers in the determination of subsidence events.

(b) The adjustment of a claim against a policy that includes mine subsidence coverage under this chapter is the sole responsibility of the insurer until the insurer makes a preliminary determination that the loss may involve mine subsidence. Upon such a determination, those persons retained by the commissioner as set out in subsection (a) of this section shall assist the commissioner and insurer in determining the existence of a mine subsidence event and the costs therein shall be paid from the fund established by section 7 of this chapter.

*As added by P.L.124-1992, SEC.8.*

#### **IC 27-7-9-10**

##### **Premiums**

Sec. 10. (a) Premiums for mine subsidence insurance under this chapter shall be established by the commissioner, who shall review at least annually the premium level and the experience data concerning operation of the fund and make changes in the premiums as required.

(b) Premiums shall be established at a rate or within a schedule of rates sufficient to:

- (1) satisfy all foreseeable claims on the mine subsidence insurance fund during the period of coverage, giving due consideration to relevant loss or claims experience or trends;

- (2) cover normal costs of operation of the mine subsidence insurance fund; and
- (3) provide a reasonable reserve fund for unexpected contingencies.

(c) Deviations from the premium level or premiums set by the commissioner may not be allowed.

*As added by P.L.164-1986, SEC.1.*

#### **IC 27-7-9-11**

##### **Report to commissioner**

Sec. 11. An insurer that enters into a reinsurance agreement with the commissioner under section 9 of this chapter shall:

- (1) report the amounts of premiums collected, at times designated by the commissioner; and
- (2) present an itemized list of losses paid, including the policy number and the location of the structures, semiannually on dates selected by the commissioner.

*As added by P.L.164-1986, SEC.1.*

#### **IC 27-7-9-12**

##### **Payment to insurer upon receipt of loss report**

Sec. 12. The commissioner shall pay an insurer all amounts due under section 9(a)(4) of this chapter within ninety (90) days after receiving a loss report. The commissioner shall require that each loss report include:

- (1) an itemized statement of the damage, repairs made, and the cost of each repair; and
- (2) any other documentation the commissioner believes will substantiate the reported loss.

*As added by P.L.164-1986, SEC.1.*

#### **IC 27-7-9-13**

##### **Nature of claims**

Sec. 13. Mine subsidence insurance claims made under this chapter do not constitute a debt, liability, or obligation of the state or a pledge of faith and credit of the state, except to the extent that the mine subsidence insurance fund has accumulated reserves from premiums, state or federal grants, investment income, or state appropriations.

*As added by P.L.164-1986, SEC.1.*

#### **IC 27-7-9-14**

##### **Subrogation rights; reports**

Sec. 14. (a) The commissioner and each insurer issuing mine subsidence insurance under this chapter have the right of subrogation. In enforcing this subrogation right, the commissioner or the insurer shall be considered the real party in interest and shall pursue any action under the insurer's or commissioner's own name.

(b) The insurer shall include in its semiannual report under section 11(2) of this chapter an itemized list of all losses in

subrogation. An insurer shall remit to the commissioner all money, less expenses, recovered as a result of subrogation actions.

*As added by P.L.164-1986, SEC.1.*

#### **IC 27-7-9-15**

##### **Recourse against insurer or policyholder; fraud or policy violations**

Sec. 15. (a) Except in case of fraud by an insurer, the commissioner has no right of recourse against an insurer. An insurer may settle losses under this chapter in the customary manner.

(b) The commissioner may require an insurer to attempt to recover from a policyholder for amounts paid to the policyholder if, in the judgment of the commissioner, the policyholder was not entitled to the amounts paid because of fraud or violation of the policy conditions. The cost of a recovery attempt under this subsection shall be borne equally by the insurer and the commissioner.

*As added by P.L.164-1986, SEC.1.*

#### **IC 27-7-9-16**

##### **Delegation of powers**

Sec. 16. The commissioner may delegate the task of executing the powers conferred upon the commissioner under this chapter to officers of the department of insurance or other persons. However, the commissioner remains fully responsible for the proper execution of those powers.

*As added by P.L.164-1986, SEC.1.*

#### **IC 27-7-9-17**

##### **Authority to adopt rules**

Sec. 17. In order to establish guidelines and procedures necessary to implement this chapter, the commissioner shall have authority to adopt rules pursuant to IC 4-22-2.

*As added by P.L.124-1992, SEC.9.*

#### **IC 27-7-9-18**

##### **Reports; claims**

Sec. 18. The department of insurance shall, every three (3) years beginning not later than November 1, 2001, publish a report regarding mine subsidence insurance provided under this chapter, including the:

- (1) number of claims filed;
- (2) amount paid for each claim; and
- (3) amount remaining in the mine subsidence insurance fund established under section 7 of this chapter;

since the date of the previous publication of the report under this section.

*As added by P.L.182-2001, SEC.5.*